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ARIZONA ATTORNEY GENERAL

May 26, 1953
Opinion No. 53-103

TO: Hon. Clarence L. Carpenter
State Senator, Gila County
Miami, Arizona

RE: Chapter 100, 21st Legislature
First Regular Session

QUESTION: What offices of a city or town
are included in the meaning of
Chapter 100, to the effect that
"every officer of a city or
town shall execute and file an
official bond * * *?"

In approaching this problem, we first refer you to Section 12-101, A.C.A. 1939, which defines an officer:

"12-101. Definitions.—By the word 'office,' 'board,' or 'commission,' used in law, is meant any office, board or commission of the state, or any political subdivision thereof, the salary or compensation of the incumbent or members of which is paid out of a fund raised by taxation, or by public revenue; by the words 'public institution' is meant any institution the maintenance of which is paid out of a fund raised by taxation, or by public revenue; by the word 'officer,' or 'public officer,' unless the context otherwise requires, is meant the incumbent of any office, member of any board or commission, his deputy or assistant exercising the powers and duties of such officer other than clerks or mere employees of such officer."

It will be noted that in this section of the code the statement is made that these definitions will be used unless the context otherwise requires. We find nothing in Chapter 100 which would require a departure from the definitions contained in Section 12-101, supra. With this in mind, we will now consider the

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decided Arizona cases interpreting Section 12-101, supra. The leading case on this point is STAPLETON v. FROHMILLER, 53 Ariz. 11, 85 P. 2d 49. In this case the court made the following observation, 1. o. 17:

"It will be seen from this that we held there were three elements requisite to a position being a public office, which are (a) the specific position must be created by law; (b) there must be certain definite duties imposed by law on the incumbent; and (c) they must involve the exercise of some portion of the sovereign power. * * *"

This rule has been followed in subsequent Arizona cases on this point. INDUSTRIAL COMMISSION v. ARIZONA STATE HIGHWAY COMMISSION, 61 Ariz. 59, 145 P. 2d 846; MCDONALD v. FROHMILLER, 63 Ariz. 479, 163 P. 2d 671; STATE v. HENDRICKS, 66 Ariz. 235, 186 P. 2d 943; TOMARIS v. STATE, 71 Ariz. 147, 224 P. 2d 209.

We are of the opinion that any person holding a position with the government of any city or town within the State of Arizona, whose office has been specifically created by the Legislature or by the City Council, acting in its legislative capacity, such office having certain and definite duties imposed by law upon the incumbent, and exercising some portion of the sovereign power, is an officer within the purview of Chapter 100.

Any other persons hired by such officers to aid in carrying out the administration of each office, but whose position and tenure are not specifically created by law, are employees and would not be included in this definition.

Considering the fact that your question does not contain information as to any specific officer or office, we are making this opinion general. Each position to be considered should be applied to the text laid down in the decided cases. However, if we might be of any further aid to you, please feel free to call upon this office.

ROSS F. JONES
The Attorney General.

ROBERT W. PICKRELL
Assistant to the
Attorney General

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